

ARKANSAS COURT OF APPEALS

DIVISION II
No. E078-262

ANDREA LEMOINE

APPELLANT

V.

DIRECTOR, ARKANSAS
DEPARTMENT OF WORKFORCE
SERVICES

APPELLEE

Opinion Delivered October 1, 2008

APPEAL FROM ARKANSAS BOARD
OF REVIEW [NO. 2007-BR-1583]

AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

The Arkansas Board of Review found that the appellant in this unemployment compensation case was discharged for misconduct in connection with her work and was thus disqualified for unemployment benefits. Appellant argues on appeal that the Board erred in so finding because there is no substantial evidence that she was discharged for misconduct. We affirm.

On appeal, the findings of the Board of Review are affirmed if they are supported by substantial evidence. *Southwestern Bell Telephone, L.P. v. Director*, 93 Ark. App. 303, 218 S.W.3d 317 (2005). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* We review the evidence in the light most favorable to the Board's findings. *Id.* Even where there is evidence upon which the Board might have reached a different conclusion, appellate review is limited to a determination of whether the

Board could reasonably reach its decision upon evidence before it. *Id.*

An individual is disqualified for unemployment benefits if discharged from her last work for misconduct in connection with the work. Ark. Code Ann. § 11-10-514(a)(1) (Supp. 2007). If the employee is discharged for misconduct in connection with the work on account of dishonesty, the disqualification remains in effect until the employee has ten weeks of employment at wages that at least equal the employee's benefit amount. Ark. Code Ann. § 11-10-514(b)(1) (Supp. 2007). In order for an employee's action to constitute misconduct so as to disqualify her, the action must be a deliberate violation of the employer's rules, an act of wanton or willful disregard of the standard of behavior that the employer has a right to expect of its employees. *Sadler v. Stiles*, 22 Ark. App. 117, 735 S.W.2d 708 (1987).

We think that the Board reasonably could find that appellant was guilty of such misconduct in this case. Although the evidence was conflicting, it is our duty to review it in the light most favorable to the Board's findings. *Southwestern Bell Telephone, L.P. v. Director*, *supra*. Viewed in that light, the record shows that appellant was employed as a hospice nurse. Her duties included visiting terminally ill patients in their homes, monitoring their conditions and vital signs, providing the patients with palliative care, arranging for prescription and provision of needed medication, and reporting her findings and actions to the central office of the hospice program. Appellant was provided with a laptop computer to chart her findings and transmit her reports. Appellant was terminated after hospice officials learned that she filed a report of a visit, including visual findings such as dry, thin, fragile skin appearance and cyanotic nail beds, several hours in advance of her actual visit. Although appellant testified

that she obtained the information in a telephone call to the patient, the fact remains that her contact and findings were reported as a home visit. On this record, we cannot say that the evidence is insufficient to support a finding that appellant dishonestly falsified a report. Nor do we agree that such misconduct, given her employer's duty to care for patients rendered vulnerable to exploitation by virtue of terminal illness, did not demonstrate wanton or willful disregard of the standard of behavior that the employer has a right to expect of its employees.

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.